

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

MONDAY, THE 10TH DECEMBER 2007 / 19TH AGRAHAYANA 1929

W.P(C).No. 34471 of 2007(D)

PETITIONER:

**CENTRAL BANK OF INDIA,
QUILON BRANCH, REPRESENTED BY ITS SENIOR MANAGER,
CENTRAL BANK OF INDIA, QUILON.**

**BY ADV. SRI.DEVAN RAMACHANDRAN
SRI.SUMESH KUMAR N.C.
SMT.T.G.SEETHAL
SRI.K.M.ANEESH**

RESPONDENTS:

- 1. M/S.N.J.SAW MILLS, ERAVIPURAM,
KOLLAM-11, REPRESENTED BY J.RAMESAN,
PROPRIETOR, RESIDING AT N.J.NIVAS,
ERAVIPURAM, KOLLAM.**
- 2. BABUJI, N.J.NIVAS,
EARVIPURAM,
KOLLAM - 11.**
- 3. TAHSILDAR (RR), KOLLAM.**

BY GOVT. PLEADER, SRI. GOVINDAN

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 10/12/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

ANTONY DOMINIC, J.

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W.P.(C) No. 34471 OF 2007 D
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Dated this the 10th December, 2007

J U D G M E N T

The direction sought for in this writ petition is to restrain the 3rd respondent from taking steps to sell the properties mentioned in Ext. p1 for the realisation of dues of M/s. J.B. Industries owned by the 2nd respondent before proceeding to sell the properties as directed in Ext. P7 judgment of this Court in W.P.(C) No. 8208/07. Petitioner, a Nationalised Bank, has advanced substantial amount to the 1st respondent and pursuant to the default committed by the 1st respondent it had filed O.A. No. 320/01 in which sale certificate was obtained from the Debts Recovery Tribunal.

2. It is stated that when steps were taken for realising the dues by sale of the mortgaged properties, the 3rd respondent informed that the property has been attached under the Revenue Recovery Act and sale notice also has been issued by the 3rd respondent. Such steps by the 3rd respondent were for realising the sales tax dues of

more than Rs.5 lakhs.

3. At that stage, though the writ petitioner filed W.P.(C) No. 8208/07 that was disposed of by this Court by Ext. P7 judgment directing the Bank to file a claim petition before the Tahsildar (RR). Accordingly, the Bank lodged the claim and the same has been rejected by Ext. P9 stating that the sales tax dues has priority over other debts. It is in the above circumstance the petitioner proceeds on the basis that the liability is that of M/s. J.B. Industries owned by the 2nd respondent and that since the 2nd respondent is one of the mortgagees of the properties covered by Ext. P1, the Sales Tax Department has initiated proceedings as against those properties.

4. When this writ petition came up for orders, in view of the contentions raised in the writ petition, the case was adjourned with a direction to the learned Govt. Pleader to obtain instructions in the matter. On instruction, today the learned Govt. Pleader submits that the defaulter is none other than the 1st respondent itself and not the 2nd respondent as wrongly pleaded by the petitioner. It is submitted that the 1st respondent has defaulted the sales tax dues for the assessment years 1997-98 and 1998-99 and that the dues is more than Rs.5 lakhs plus interest. It is contended that the sales

tax dues have priority in view of the provisions contained in Section 26A of the KGST Act.

5. Now that the respondents have categorically stated before this Court that the 1st respondent is the defaulter and not the 2nd respondent, the 3rd respondent is perfectly justified in proceeding against the assets of the 1st respondent. It may be true that the properties have been mortgaged to the petitioner Bank, but then by operation of the statutory provisions, the liability that is due to the Sales Tax Department has priority over the other dues. If that be so, the revenue recovery proceedings initiated by the 3rd respondent cannot be faulted and if so the writ petition is only to be dismissed and I do so.

ANTONY DOMINIC
JUDGE

jan/-